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**United States District Court
Central District of California**

11 MARLENE THOMAS, individually and
12 as successor-in-interest to RYAN
THOMAS,

13 Plaintiff,

14 v.

15 AEOLUS AIR CHARTER, INC. et al.,
16 Defendants.
17

Case № 2:23-cv-01523-ODW (JPRx)

**ORDER GRANTING MOTION TO
REMAND [14]**

18 **I. INTRODUCTION**

19 Plaintiff Marlene Thomas, individually and as successor-in-interest to Ryan
20 Thomas, initiated this wrongful death suit in state court against Defendant Aeolus Air
21 Charter, Inc. (Compl., ECF No. 10-1.) Plaintiff filed a First Amended Complaint
22 adding Defendants Let's Jett, Inc.; Conner Jadwin; and Dave Ventrella and a claim for
23 punitive damages. (First Am. Compl. ("FAC"), ECF No. 1-1.) Defendants removed,
24 asserting subject matter jurisdiction on the basis of a federal question. (Notice of
25 Removal ("NOR"), ECF No. 1.) Plaintiff now moves to remand. (Mot. Remand, ECF
26 No. 14.) For the following reasons, the Court **GRANTS** Plaintiff's Motion.¹

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28 ¹ The Court carefully considered the papers filed in connection with the Motion and deemed the
matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

In the First Amended Complaint, Plaintiff alleges that on July 26, 2021, a Bombardier Inc. CL-600-2B16 airplane bearing United States Registration Number N605TR was in the course of private flight for hire operated by Aeolus. (FAC ¶ 1.) Jadwin is the CEO of Aeolus, and Ventrella is its Director of Operations. (FAC ¶ 26.) The pilots of the subject flight were Alberto Montero De Collado De La Rosa (“Pilot Alberto”) and Bret Ebaugh (“Pilot Ebaugh”). (FAC ¶ 34c.)

At approximately 1:18 p.m., in Truckee, California, the plane crashed, killing everyone onboard the aircraft, (FAC ¶ 2) including Ryan Thomas (hereafter, “Decedent”). It is alleged in the operative complaint at the time of and as a result of the crash Decedent was injured, suffered pain, was disfigured, and ultimately died. (FAC ¶ 3.) In total, the incident resulted in six fatalities. (FAC ¶ 4.) The National Transportation Safety Board has issued a preliminary report and additional factual reports. (FAC ¶ 5.)

On January 27, 2022, Plaintiff brought suit against Aeolus in the Superior Court of California, County of Los Angeles, setting forth claims for (1) negligence; (2) products liability—strict; and (3) products liability—negligence. (NOR ¶ 2; Compl. ¶¶ 20–56.) Discovery commenced; the parties propounded and responded to written discovery, and Jadwin and Ventrella were deposed. (Reply 2, 6, ECF No. 16.)

On December 29, 2022, Plaintiff requested the state court’s leave to amend the Complaint. (Notice of Ruling re: FAC Ex. A (“Tentative Ruling”) 1, ECF No. 10-3.) In particular, Plaintiff sought, primarily on the basis of information obtained during discovery, to (1) add a prayer for punitive damages and supporting allegations; (2) add Let’s Jett, Jadwin, and Ventrella as Defendants; and (3) withdraw her second and third causes of action for products liability. (*Id.* at 2.) The state court granted leave to amend. (*Id.* at 4.) Plaintiff filed the First Amended Complaint, and on January 30, 2023, Aeolus received a copy of it. (NOR ¶ 2.)

1 The First Amended Complaint contains an extensive set of new allegations
2 supporting Plaintiff's sole claim for negligence and the associated new prayer for
3 punitive damages. Broadly, Plaintiff asserts that the following facts, to be proven,
4 support an award of punitive damages:

- 5 • Aeolus prioritized obtaining profits over developing safety programs in that it
6 failed to design and implement a Safety Management System and a Crew
7 Resource Management system, in conformance with the industry standards,
8 (FAC ¶¶ 30–36, 38);
- 9 • Aeolus failed to hire a Director of Safety despite representing to the Federal
10 Aviation Administration (“FAA”) that it had done so, (FAC ¶ 37);
- 11 • Aeolus, through Jadwin and Ventrella, took improper shortcuts in obtaining
12 Aeolus's FAA Part 135 charter certificate in that they misrepresented their base
13 of operations as being in Fargo, North Dakota so that they could more quickly
14 obtain their charter certificate from the FAA Flight Standards District Office
15 headquartered there, (FAC ¶ 39);
- 16 • Aeolus rushed to hire Pilot Ebaugh without proper vetting, (FAC ¶¶ 42, 44);
- 17 • Aeolus failed to check with Pilot Alberto's flight instructors which likely would
18 have revealed he had the very deficiencies that contributed to this accident
19 taking place, (FAC ¶¶ 43–44);
- 20 • Aeolus failed to sufficiently investigate Pilot Alberto's immigration status
21 which would have revealed that his visa did not allow him to fly for
22 compensation in the United States, (FAC ¶¶ 46–47);
- 23 • Pilot Alberto violated Federal Aviation Regulations (“FARs”) when he
24 attempted to land the plane with a circle-to-approach maneuver, because the
25 relevant FAR rule prohibited that type of aircraft (Category D) from performing
26 such a maneuver at the Truckee airport. (FAC ¶¶ 56–70.) Rather than pulling
27 back to make a second attempt (i.e., performing a “go-around”), Pilot Alberto
28 chose to “try to force the landing.” (FAC ¶¶ 67–68.) “During the final descent,

1 multiple aircraft warning devices went off” (FAC ¶ 70.) The two pilots
2 “fought over the control of the aircraft,” and the plane went “into a stall.” (*Id.*)
3 The plane “fell from the sky in a terrifying and horrific manner, ultimately
4 crashing into trees and the ground.” (*Id.*)

5 In addition, Plaintiff supports her punitive damages request with allegations that
6 Aeolus operated the flight as an “unauthorized and illegally operated Part 135 flight.”
7 (FAC ¶ 49.) Part 135 refers to 14 C.F.R. Part 135, the FAA regulation governing
8 commuter and on-demand flight operations, also known as charter flights. Plaintiff
9 alleges that the subject plane was not on Aeolus’s charter certificate at the time of the
10 crash and that, as a result, Aeolus was not authorized to operate the flight as a Part 135
11 flight. (FAC ¶ 51.)

12 Plaintiff alleges that, instead, Aeolus improperly operated the flight under
13 14 C.F.R. Part 91 (“Part 91”), (FAC ¶ 52), which applies more generally to aircraft
14 operated within the United States, 14 C.F.R. § 91.1. Plaintiff alleges this was
15 improper because Decedent was a client of Aeolus who provided Aeolus with “things
16 of value” in exchange for the flight, and as a result, the flight was a charter flight
17 subject to Part 135. (FAC ¶ 50d.) At some point in the past, Defendants disputed this
18 conclusion by asserting that Decedent was a “company official” or “partner” of
19 Aeolus and that the flight was accordingly properly a Part 91 flight. (FAC ¶ 53.)

20 On March 1, 2023, Defendants removed the case to this Court.² On March 31,
21 2023, Plaintiff filed the Motion now under consideration, arguing that Defendants’
22 removal was untimely or that, in the alternative, there is no federal question sufficient
23 to confer subject matter jurisdiction. (Mot. 1.) The Motion is fully briefed.

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27 ² All four Defendants in this matter are represented by the same counsel. Let’s Jett, Jadwin, and
28 Ventrella acknowledged having received the First Amended Complaint shortly before removal.
(NOR ¶ 2.) All four Defendants removed, and all four Defendants oppose remand. (*Id.* at 1; *See*
Opp’n, ECF No. 15.)

III. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction over only those matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original jurisdiction where an action presents a federal question under 28 U.S.C. § 1331, or where there is diversity of citizenship under 28 U.S.C. § 1332. A defendant may remove a case from state court to federal court pursuant to the federal removal statute, 28 U.S.C. § 1441, based on federal question or diversity jurisdiction.

A. Motion to Remand for Lack of Subject Matter Jurisdiction

“A motion to remand is the proper procedure for challenging removal.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). Courts strictly construe the removal statute against removal jurisdiction, and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *see Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Where doubt regarding the right to removal exists, a case should be remanded to state court.”).

When removal jurisdiction is called into question, the party that removed the case bears the ultimate burden of establishing subject matter jurisdiction. *See Gaus*, 980 F.2d at 566.

B. Motion to Remand for Procedural Defects

“[A] notice of removal [must] be filed within thirty days of receipt from the plaintiff of an initial pleading or other document from which it is ascertainable that the case is removable.” *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1124 (9th Cir. 2013) (citing 28 U.S.C. §§ 1446(b)(1), (b)(3)). “[N]otice of removability under § 1446(b) is determined through examination of the four corners of the applicable pleadings, not through subjective knowledge or a duty to make further inquiry.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005).

Untimeliness of removal is a procedural defect. *Maniar v. F.D.I.C.*, 979 F.2d 782, 784 (9th Cir. 1992). Under 28 U.S.C. § 1447(c), “[a] motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal.” *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1037 n.4 (9th Cir. 1995). The purpose of this time limit is “to resolve the choice of forum at the early stages of litigation,” and therefore it is strictly construed. *Id.* at 1038; *see also In re Edward Jones Holders Litig.*, 453 F. Supp. 2d 1210, 1213 (C.D. Cal. 2006) (holding that all objections to procedural defects in the removal process were waived where plaintiffs’ motion to remand was untimely by two days).

IV. DISCUSSION

Plaintiff proffers two alternative, and somewhat mutually exclusive, bases for remand. First, Plaintiff argues that the original Complaint was sufficient to place Defendants on notice that the case involved a federal question and that, accordingly, Defendants’ Motion is untimely. (Mot. 1–4.) Second, Plaintiff argues that, assuming the original Complaint did not involve a federal question, the newly added allegations remain insufficient to implicate a federal question, such that it is appropriate to remand for lack of subject matter jurisdiction. (*Id.* at 5–11.)

A. Analytical Framework

Plaintiff first argues that removal was untimely, but the Court need not resolve this issue because remand is appropriate whether removal was timely or untimely. Obviously, if removal was untimely, then the Court should remand this case on that basis.

But if removal was timely, then it must be true that the original Complaint did not involve a federal question. After all, if the allegations in the original Complaint did involve federal questions, then Aeolus’s time to remove the case would have expired in early 2022, shortly after Plaintiff filed the case. Thus, Defendants must show that the First Amended Complaint raises federal questions but that the original

1 Complaint did not.

2 To make this showing, Defendants argue—quite naturally—that the new
3 allegations alone raise federal questions:

4 Defendants return to the fundamental principle underlying [their]
5 removal of the FAC in the first place. Plaintiff has deliberately elected to
6 craft an amendment to the Complaint with sufficiently novel claims and a
7 prayer for punitive damages, arising explicitly under federal law.
8 Plaintiff goes on to cite to alleged violations of FARs with particularity,
9 leaving no possible conclusion other than an express strategy to interpose
claims of a federal character.

10 (Opp’n 15.) Defendants, who bear the burden of showing a federal question, point
11 solely to the new allegations as the source of the federal questions. Thus, the central
12 issue for resolution is whether Plaintiff’s newly added allegations provide the Court
13 with federal question jurisdiction. If they do not, then the result remains the same as if
14 removal was untimely: the Court should remand the case. Herein, the Court addresses
15 this issue and determines that the newly added allegations are not sufficient to raise a
16 federal question, and accordingly, remand is appropriate, whether or not removal was
17 untimely.

18 **B. Whether Newly Added Allegations Invoke a Federal Question**

19 The newly added allegations add details about the facts and circumstances of
20 the crash, and in doing so, they support Plaintiff’s negligence claim and the associated
21 claim for punitive damages. The allegations derive from information Plaintiff
22 obtained in discovery and elsewhere regarding Pilot Alberto’s role in the accident and
23 Jadwin’s and Ventrella’s acts and omissions as Aeolus’s principals, among other
24 things.

25 The new allegations involve federal law in three principal ways. First, the
26 allegation that Aeolus operated the plane as an unauthorized charter flight implicates
27 aspects of Part 91 and Part 135, which are federal regulations. Second, the allegation
28 that Aeolus rushed to get its charter certificate from a district where it was not

1 headquartered involves, to some extent, the FAA’s regulatory scheme for issuing
2 charter certificates. And third, the allegation that Pilot Alberto violated FARs in
3 performing a circle-to-approach landing maneuver implicates the FARs to the extent
4 necessary to describe and substantiate Pilot Alberto’s violation. The question is
5 whether, as Defendants contend, any or all of these invocations of federal law are
6 sufficient to raise a federal question under the relevant standards. For the following
7 reasons, the Court finds that the answer to this question is no.

8 *1. Jurisdiction over federal issues embedded in state-law claims*

9 Under 28 U.S.C. § 1331, district courts have subject matter jurisdiction over
10 “all civil actions arising under the Constitution, laws, or treaties of the United States.”
11 An action arises under federal law within the meaning of 28 U.S.C. § 1331 if “a well-
12 pleaded complaint establishes either that federal law creates the cause of action or that
13 the plaintiff’s right to relief necessarily depends on resolution of a substantial question
14 of federal law.” *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 690
15 (2006).

16 When, as here, the plaintiff pleads only state-law claims, removal is
17 nevertheless proper in the “less frequently encountered” case where the claims
18 “implicate significant federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue*
19 *Eng’g & Mfg.*, 545 U.S. 308, 312 (2005). This doctrine “captures the commonsense
20 notion that a federal court ought to be able to hear claims recognized under state law
21 that nonetheless turn on substantial questions of federal law, and thus justify resort to
22 the experience, solicitude, and hope of uniformity that a federal forum offers on
23 federal issues.” *Id.* Even so, not every state action that merely “embrac[es] a point of
24 federal law” is removable. *Id.* at 314.

25 Thus, the Court has “jurisdiction over federal issues embedded in state-law
26 claims” when (1) the “state-law claim necessarily raise[s] a stated federal issue”;
27 (2) that issue is “actually disputed” and (3) “substantial,” and is one (4) “which a
28 federal forum may entertain without disturbing any congressionally approved balance

1 of federal and state judicial responsibilities.” *Id.*; see also *Gunn v. Minton*, 568 U.S.
 2 251, 258 (2013) (setting forth the four elements from *Grable* and noting that the
 3 “canvas” depicting “the contours of this slim category” of cases “looks like one that
 4 Jackson Pollock got to”). “Where all four of these requirements are met, . . .
 5 jurisdiction is proper because there is a ‘serious federal interest in claiming the
 6 advantages thought to be inherent in a federal forum,’ which can be vindicated without
 7 disrupting Congress’s intended division of labor between state and federal courts.”
 8 *Gunn*, 568 U.S. at 258 (quoting *Grable*, 545 U.S. at 313–14). The category of cases
 9 that satisfy the four-part test in *Grable* has been described as “special and small.”
 10 *McVeigh*, 547 U.S. at 699; *City of Oakland v. BP PLC*, 969 F.3d 895, 904 (9th Cir.
 11 2020) (“Only a few cases have fallen into this slim category.” (internal quotation
 12 marks omitted)).

13 2. *Application of Grable requirements*

14 Focusing on the newly added allegations, the First Amended Complaint fails the
 15 four-element test the Supreme Court announced in *Grable*. The key observation here
 16 is that, to the extent any issues regarding federal aviation regulations will arise, they
 17 will arise only in the context of Plaintiff’s broader attempt to demonstrate to the
 18 factfinder (1) the existence of negligence and (2) the appropriateness of punitive
 19 damages. The jury, in determining whether negligence exists, will consider whether
 20 Defendants met the relevant standard of care and will answer “yes” or “no.” (*See*
 21 CACI 401; CACI VF-400.) With regard to punitive damages, the jury will be asked to
 22 expressly determine whether Defendants’ conduct constituted “malice, oppression, or
 23 fraud,” and if “yes,” the jury will enter a dollar amount for the punitive damages.
 24 (Reply 11 (citing CACI VF-3902).) The jury will not be asked to answer any
 25 particular question about whether, for example, the flight legally and factually
 26 qualified as a charter flight and was thus subject to the rules of Part 135.

27 This observation has several repercussions. First, it means that, strictly
 28 speaking, Plaintiff’s sole claim for negligence, and the associated punitive damages

1 request, does not “necessarily raise” any federal issue. *See Grable*, 545 U.S. at 314.
2 The jury, in determining whether Defendants’ conduct constitutes malice, oppression,
3 or fraud, will consider numerous aspects of Defendants’ conduct and will be free to
4 place as much or as little weight on each aspect as they reasonably choose. For
5 example, the jury might decide that whether or not the flight was a charter flight and
6 thus subject to Part 135 is not relevant to their determination regarding punitive
7 damages and might pass on resolving this dispute altogether. None of the federal
8 issues—regarding the flight’s status as a Part 135 charter, Aeolus’s application for a
9 charter certificate in North Dakota, and Pilot Alberto’s violation of the FARs in
10 employing a circle-to-landing approach—are a “necessary” part of the jury’s overall
11 determination of negligence or of malice, oppression, or fraud. Thus, the federal
12 issues are not necessarily raised.

13 Moreover, at least some of the purported federal questions do not appear to be
14 “actually disputed.” *Grable*, 545 U.S. at 314. For example, it appears undisputed that
15 Pilot Alberto in fact used a circle-to-landing approach in attempting to land the plane,
16 and that the relevant FARs prohibited him from doing so. This purported federal
17 question is not actually a question because it is not in dispute. Similarly, although
18 there may be a factual dispute about Aeolus’s motives for applying for a charter
19 certificate in North Dakota, this does not place any federal regulation or agency action
20 into actual dispute. There is no suggestion this factual dispute will require the court to
21 interpret a federal regulation, resolve a disputed issue about a regulation’s application,
22 or resolve a dispute about whether a federal agency acted in accordance with the law.

23 Additionally, and crucially, none of the purported federal questions are
24 “substantial.” The substantiality inquiry “focuses on the importance of a federal issue
25 ‘to the federal system as a whole.’” *City of Oakland*, 969 F.3d at 905 (quoting *Gunn*,
26 568 U.S. at 260). The Ninth Circuit in *City of Oakland* provided examples of cases
27 involving sufficiently substantial federal questions:
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1 An issue has such importance when it raises substantial questions as to
2 the interpretation or validity of a federal statute, or when it challenges the
3 functioning of a federal agency or program. Moreover, an issue may
4 qualify as substantial when it is a pure issue of law that directly draws
5 into question the constitutional validity of an act of Congress, or
6 challenges the actions of a federal agency, and a ruling on the issue is
both dispositive of the case and would be controlling in numerous other
cases.

7 *Id.* (citations and internal quotation marks omitted).

8 A federal issue is not substantial if it is “fact-bound and situation-specific,” *id.*
9 at 905 (quoting *McVeigh*, 547 U.S. at 701), or if it “raises only a hypothetical question
10 unlikely to affect interpretations of federal law in the future,” *id.* (quoting *Gunn*,
11 568 U.S. at 261). Moreover, “[a] federal issue is not substantial merely because of its
12 novelty or because it will further a uniform interpretation of a federal statute.” *Id.*
13 (citations omitted).

14 Under these standards, none of the purported federal issues in this case are
15 sufficiently substantial. There is no suggestion that this case involves a challenge to
16 the validity of a federal regulation or to the actions or practices of the FAA. Plaintiff
17 does not raise a constitutional challenge, and there does not appear to be any pure
18 issue of federal law for the Court to resolve.

19 Instead, the purported federal issues are relatively insubstantial in the context of
20 the case, and are undoubtedly insubstantial in the context of the federal system as a
21 whole. As discussed, to the extent the jury will engage with any federal aviation rules
22 or regulations at all, it will do so only for the purpose of making the overall
23 determination whether Defendants (1) were negligent and (2) committed malice,
24 oppression, or fraud. Thus, any federal law-related findings by the jury will be
25 implied rather than expressly stated, and will be bound to the facts of this particular
26 case.

27 Moreover, the only actually disputed federal issue that could fairly be
28 characterized as having a modicum of federal substantiality is whether the subject

1 flight was a charter flight subject to the regulations of Part 135. Making this
2 determination will ostensibly involve applying certain federal aviation concepts or
3 regulations to the facts of this case. Even so, no party suggests that determining
4 whether the flight was a charter flight will require the Court to announce a new
5 interpretation of Part 135 or related regulations. To the extent resolution of this issue
6 touches on a federal question, any such resolution is entirely bound to the particular
7 facts of this case such that the federal question cannot be considered “substantial.”

8 In the end, the Part 135 charter issue is just one of many aspects of Defendants’
9 conduct the jury will weigh in determining whether to award punitive damages.
10 Moreover, this case is about more than punitive damages; punitive damages are a
11 particular remedy that comprises just one part of one element of Plaintiff’s negligence
12 claim. Thus, this case is not like the cases such as *Grable* where an element of a
13 party’s cause of action requires the court to directly confront and apply a federal
14 statute or regulation as part of determining the element. 545 U.S. at 311. For these
15 reasons, the federal issues raised are not substantial.

16 In summary, the purported federal questions fail under the first three elements
17 of the test for jurisdiction over federal questions embedded in state-law claims. Thus,
18 the case does not arise under federal law, and remand is appropriate whether or not
19 removal was timely.³

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25 ³ In the Motion, Plaintiff notes that Defendants briefly alleged diversity jurisdiction in the Notice of
26 Removal, and Plaintiff describes why there is no diversity jurisdiction in this case. (Mot. 11.)
27 Defendants do not attempt to rebut this showing or otherwise argue that diversity jurisdiction is a
28 basis for the Court’s subject matter jurisdiction in this case. (See Opp’n 1 (“There is no diversity of
citizenship alleged among the parties.”).) The Court therefore further concludes that diversity
jurisdiction is lacking.

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion to Remand,
3 (ECF No. 14), and **REMANDS** this matter to the Superior Court of California,
4 County of Los Angeles, 111 N. Hill St., Los Angeles, CA 90012, Case
5 No. 22STCV03393. All dates and deadlines are **VACATED**. The Clerk of the Court
6 shall close this case.

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8 **IT IS SO ORDERED.**

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10 July 24, 2023

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13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**
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